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**IN THE SUPREME COURT  
OF THE UNITED STATES**

October Term, 1982

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No. 82-1237

**CARMELA M. STELLA, M.D.,**

**Plaintiff-Appellant,**

**v. .**

**MERCY HOSPITAL, PORT HURON,  
MICHIGAN, a Corporate Assumed  
Name for the Sisters of Mercy Health  
Corporation, a Michigan nonprofit  
corporation, RONALD BALBOA, M.D.,  
JOHN M. MILLER, M.D., JOHN C.  
SULLIVAN, M.D., JOSEPH A. BARSS,  
M.D., JAMES G. WOLTER, M.D.,  
JAMES W. COPPING, M.D., JAMES J.  
SNIDER, M.D., JOHN A. YOUNGS, M.D.,  
GORDON H. WEBB, M.D., SISTER  
MADELINE SAGE, MICHAEL SCHWARTZ,  
SISTER MARIAN MERTZ, SISTER MARY  
PATRICE SINNOT, Jointly and Severally,**

**Defendants-Appellees.**

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**MOTION TO DISMISS APPEAL**

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### QUESTION PRESENTED

Whether the District Court properly granted defendants summary judgment on plaintiff's claims under sections 1 and 2 of the Sherman Act, where plaintiff failed to present any evidence of (1) a conspiracy motivated by anti-competitive intent, (2) any adverse effect on competition or the public from defendants' actions or (3) the possession of or attempt to achieve monopoly power by defendants.

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OPINIONS BELOW

In the Appendix to her Jurisdictional Statement, plaintiff omitted a sentence in her text on p. A-17. The corrected text on that page is as follows:

This action was filed in 1980, making all claims prior to 1976 without legal force. Marlowe v Fisher Body, 489 F2d 1057 (CA 6, 1973); United States v Western Casualty and Surety Co, 359 F2d 521 (CA 6, 1966). Accordingly, plaintiff's motion is DENIED.

Logically the Court must turn to defendants' motion for summary judgment. In their brief, defendants argue two separate and independent grounds for summary judgment. They are:

1. Stella has failed to allege, let alone present, any facts which might establish the existence of an "antitrust conspiracy", that is, a conspiracy intended to harm competition; and
2. Assuming that Stella could present evidence supporting a finding of a conspiracy motivated by anticompetitive intent, she has failed to raise a genuine issue of fact as to whether the alleged conspiracy had a sufficient effect on competition to

constitute a violation of  
either Section 1 or 2 of the  
Sherman Act.

The Court agrees with defendants on  
both grounds.

Plaintiff admits and there is  
overwhelming documentation in the file

STATEMENT REGARDING JURISDICTION

The Sixth Circuit Court of Appeals denied plaintiff Stella's appeal of the District Court's judgment against her on October 25, 1982, and denied her Petition for Rehearing on November 24, 1982. The Sixth Circuit's mandate was issued on November 29, 1982.

These decisions concerned only the antitrust grounds raised in Stella's Amended Complaint. No constitutional issues were raised by Stella in her Amended Complaint or in her pleadings to the Sixth Circuit, except for the unsupported and erroneous statement, made in an improperly filed pleading after her Brief on Appeal and Reply Brief had been filed, that "Statutes of Limitation that limit the protection of constitutional rights are unconstitutional." Suggestion of Hearing En Banc. This issue was, properly, never addressed by the Sixth Circuit.

Therefore, the only basis for this Court's jurisdiction is pursuant to 28 USC §1254(1), pertaining to grants of writs of certiorari.



## STATEMENT OF THE CASE

This action was filed on January 23, 1980 in the United States District Court for the Eastern District of Michigan, Southern Division. A at 1.<sup>1</sup> Plaintiff Carmela M. Stella, M.D. ("Stella") alleges herein that defendants engaged in a conspiracy to restrain trade and a conspiracy to monopolize the practice of medicine at Mercy Hospital in violation of §§1 and 2 of the Sherman Act, 15 USC §§1 and 2, all claimed to arise out of Stella's loss of staff privileges to practice medicine at Mercy Hospital, Port Huron, Michigan. A at 13.

From 1971 through 1977, Stella engaged in the practice of general medicine in Richmond,

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<sup>1</sup>As used herein, "A" refers to the Appendix filed by Stella with the Sixth Circuit Court of Appeals which contains Stella's case-in-chief only, and "SA" refers to the Supplemental Appendix filed by defendants with the Sixth Circuit which contains relevant material not included within Stella's Appendix.

Michigan. SA at 22.<sup>2</sup> Prior to December of 1971, Stella admitted and treated patients at St. Joseph Hospital, Mt. Clemens, Michigan. SA at 21. After losing her staff privileges at St. Joseph Hospital in December, 1971, Stella applied for privileges at Mercy Hospital and Port Huron General Hospital, both in Port Huron, Michigan, and River District Hospital in St. Clair, Michigan. SA at 23-24. Although River District and Port Huron General denied her applications in 1972 and 1974, respectively, Mercy Hospital granted courtesy privileges to Stella in 1974. SA at 25-31.

Early in 1976, the Executive Committee of the Medical Staff of Mercy Hospital convened to consider reappointments to the medical staff. The members of the Committee (most of whom are

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<sup>2</sup>Defendants will not herein attempt to respond to the series of wild allegations made by Stella in her Brief, none of which have any support in the record in this case or in fact. Because of the obvious lack of any legal basis for Stella's appeal, these matters need not be addressed.

defendants in this case) were other physicians at Mercy. SA at 48-49. Only one member of the Committee was engaged in Stella's area of practice, the general practice of medicine. SA at 48-49. Based upon the recommendations of the Department of Medicine and the Credentials Committee and their review of Stella's medical practice at Mercy, the Executive Committee adopted a resolution denying Stella's reappointment to the staff because the quality of her medical care failed to meet hospital standards. SA at 14-15.

At Stella's request, a lengthy appeal hearing before the Executive Committee was held. SA at 36. Prior to the hearing, the Committee furnished Stella with reviews of seventeen (17) representative cases cited by the Medical Staff as examples of the medical misconduct giving rise to the charges. SA at 34. At the hearing, certain physicians testified concerning their criticisms of Stella's professional

performance. Stella, who was represented by counsel, was given a full opportunity to explain her position and to rebut the charges of inadequate medical care advanced against her. SA at 41-42. After full consideration of the evidence presented and the brief submitted by Stella's attorney, the Executive Committee decided that Stella should be denied reappointment to the medical staff. SA at 38-39. The Committee based its decision on specific medical criticisms falling into four general areas: (1) mistakes in diagnoses, (2) inappropriate medical treatment, including unnecessary admissions, unnecessary treatment, inappropriate use of antibiotics, and excessive use of laboratory and x-ray diagnostic studies, (3) interference with post-operative management of surgical patients, and (4) repeated disregard of specialist consultants' recommendations. SA at 14-15.

Stella appealed the Executive Committee's decision to the defendant hospital's Eastern District Regional Board, some of whose members are also defendants in this case. At the Regional Board hearing, Stella was again represented by counsel and afforded an opportunity to explain her position. SA at 41-42. After reviewing all of the evidence presented at the Executive Committee hearing and briefs submitted by Mercy and Stella's counsel, the Regional Board affirmed the Executive Committee's decision not to reappoint Stella to the staff. SA at 40-41.

In her deposition, Stella admitted that Mercy's decision to deny her reappointment was based upon a concern about her professional capabilities. Stella acknowledged that the doctors at Mercy were upset that she "didn't follow specialists' advice when they were brought in as consultants," and that "there was basically a difference of opinion between [her] and the

Executive Committee on when [she] should follow specialists' advice." SA at 43. "The big basis for the clash, the disagreement, between [Stella] and the Executive Committee," she further admitted, "was a difference in opinion in the handling of patients' treatment. The follow-up of the patient. A difference of opinion." SA at 44.

Stella knows of no other physician that has been excluded from the practice of medicine at Mercy Hospital as a result of the alleged conspiracy. SA at 51-53. Indeed, with respect to her claim against Mercy, Stella emphasizes that she is referring "not to anybody else's problems . . . . I'm referring to my problems." SA at 54-55. Furthermore, no member of the public suffered injury as a result of Stella's loss of privileges at Mercy. Stella states that, after she closed her private practice in Richmond, her patients "obviously" found other doctors to serve them. SA at 56. After Stella left Richmond,

Michigan, her practice was essentially taken over by another physician. SA at 45-46. "A good number of patients went to this new M.D. and some were absorbed by the other ones." SA at 47.

On December 14, 1977, the Michigan Attorney General brought an action against Stella before the Michigan Medical Licensing Board, seeking the revocation of Stella's license to practice medicine in Michigan. SA at 1. On September 2, 1981, the Attorney General dismissed this action against Stella without prejudice because, after leaving Michigan to reside in California, Stella had failed to apply to renew her license. SA at 11. Stella is currently working and licensed to practice medicine in California.

On November 14, 1978, plaintiff Stella, represented by counsel, filed an action against defendants in St. Clair County Circuit Court for the State of Michigan. In her Complaint, Stella

claimed, inter alia, that defendants engaged in sexual discrimination, tortiously interfered with her "economic pursuits", and breached her employment contract by denying her reappointment to the medical staff at Mercy Hospital, Port Huron, Michigan. However, this action was thereafter dismissed voluntarily by Stella.

Stella, represented by new counsel, subsequently filed this action. A at 1. Approximately one year after this action was filed, Stella's counsel withdrew from the case. A at 2. Since that time, Stella has prosecuted this action as an in propria persona plaintiff, filing numerous pleadings and deposing several persons. A at 4. Defendants took Stella's deposition on June 15, 1981, at which deposition Stella was represented by counsel. SA at 19-20.

On October 29, 1981, almost two years after initiating this action, Stella filed a Motion for Joinder, requesting the District Court to add St. Joseph Hospital, River District Hospital, and



Port Huron General Hospital as co-defendants (hereinafter collectively referred to as the "Non-joined Hospitals"). Stella thereby intended to attack the refusal of these hospitals to grant her medical staff privileges, which refusals occurred several years before Mercy's and 8-10 years before the date of her Motion. A at 3.

On April 5, 1982, after the close of discovery, the District Court entered an order denying Stella's Motion for Joinder, granting defendants' Motion for Summary Judgment, and ruling that Stella's various other procedural motions were thereby rendered moot. A at 16-20. With respect to the Motion for Joinder, the District Court concluded that "even assuming plaintiff's claims against these hospitals were legally sufficient on their face, . . . said claims are barred by the four-year statute of limitations." A at 19.

In granting Mercy's Motion for Summary Judgment, the District Court found that

"Plaintiff admits and there is overwhelming documentation . . . to support the thesis that plaintiff's suspension of staff privileges was based solely on irreconcilable differences of opinion on what constitutes appropriate or even standard medical treatment," and that "under no circumstances can these considerations of utmost medical importance be construed to form the basis or nucleus for an 'antitrust conspiracy.' "

A at 20. The District Court further held that Stella "failed to show in any pleading that the suspension of her staff privileges at Mercy Hospital prejudiced the public interest by substantially or significantly affecting commerce, . . . or more specifically the practice of medicine in Port Huron or southeast Michigan", and that she had "failed to show a genuine issue of fact as to whether the alleged conspiracy had any effect on competition in derogation of the Sherman Act." A at 20.

Thus, the District Court's decision was based on two separate and independent bases: (1) the absence of any evidence probative of the existence of an antitrust conspiracy, and (2) the absence of any evidence that defendants' actions caused significant injury to the public or to the nature of competition in any relevant market. The court held that either of these flaws alone would have been sufficient to defeat Stella's claim as a matter of law.

Stella appealed this decision to the Sixth Circuit Court of Appeals. Stella addressed the Sixth Circuit (as she has this Court) regarding not only her Sherman Act claims and the District Court's refusal to join additional defendants, but also certain alleged improprieties by defendants and officials of the State of Michigan in connection with what Stella has called the "Administrative Court." See, e.g., Stella's "Statement on Appeal" at 5-7, 14-19. These unsupported and erroneous allegations relate to

actions in connection with the Michigan Attorney General's efforts to revoke Stella's medical license. However, that licensing action is not a part of this case, the events therein are nowhere raised in Stella's Amended Complaint, and the state officials involved therein are not parties to this case. For this reason, defendants have not responded to these allegations of Stella.

The Sixth Circuit affirmed the District Court on October 25, 1982, stating that "the plaintiff utterly failed to proffer sufficient facts to show that the defendants willfully conspired to unreasonably restrain competition . . . or that defendants conspired with predatory intent and without legitimate business reasons to maintain a monopoly. . . ." The Court held that "all facts contained in this case . . . show that the defendants' conduct was motivated by understandable and legitimate business and medical reasons."

The Sixth Circuit reached its decision without oral argument, stating that "the questions on which the case depends are so unsubstantial as not to need further argument."

The Sixth Circuit denied Stella's Petition for Rehearing on November 24, 1982, and issued its mandate on November 29, 1982.

#### SUMMARY OF ARGUMENT

The grounds stated by Stella for this Court's jurisdiction on appeal are baseless. 28 USC § 2403(a), cited by Stella, does not provide for a right of appeal to the Supreme Court. An appeal as of right to this Court arises only in connection with a decision of a lower court regarding the constitutionality of a state or federal statute. 28 USC § 1254(2). Yet no decision regarding the constitutionality of any statute was made by the Sixth Circuit below.

Nor does a proper basis exist for this Court to grant certiorari pursuant to 28 USC §

1254(1). The statutory and constitutional provisions cited by Stella in her statement of the issues on appeal are facially irrelevant to the antitrust issues in this cause, and were not raised below or in Stella's Amended Complaint. Moreover, the heart of Stella's petition concerns the specific factual circumstances underlying her grievance. These circumstances were carefully considered by both the District Court and the Sixth Circuit Court of Appeals and were found not to create a dispute of material fact. These factual arguments do not merit the attention of this Court.

The Sixth Circuit based its decision on well-accepted antitrust principles relating to what is required to state a cause of action for an unreasonable restraint of trade or unlawful monopolization. There is no conflict between the circuit courts on this issue, and no important question presented which justifies the grant of certiorari.

ARGUMENT

A. Plaintiff Has No Right To Appeal.

Stella has denominated her action as an appeal as of right, not a petition for certiorari. However, there is no possible basis for an appeal as of right in this cause.

Appeals may be made to this Court as of right only from a lower court decision finding a federal or state statute unconstitutional. 28 USC §1252, 28 USC §1254. Stella admits in her statement of jurisdiction that the Sixth Circuit made no decision either upholding or denying the constitutionality of any statute.

In any event, this whole case from the start has included only allegations of violations of the antitrust laws by defendants. No issues relating to the constitutionality of a statute were raised in Stella's Amended Complaint, or even in her Brief on Appeal.

Unquestionably, Stella does not possess an appeal as of right in this case.

B. This Court Should Decline To Grant Stella's  
Petition For Writ of Certiorari.

Stella drafted her pleading as if it were a Jurisdictional Statement on appeal. However, since Stella did cite without explanation 28 USC §1254(1), relating to jurisdiction on petition for writ of certiorari, and because of Stella's current in propria persona status, Stella's brief will be treated, alternatively, as a petition for writ of certiorari.

Yet, this interpretation yields no better reason for this Court's review of Stella's claim. The issues raised by Stella are frivolous and arise from a basic misreading of the statutes Stella cites. The decision of the Sixth Circuit from which Stella appeals consists of the straightforward application of well-settled antitrust principles to the particular facts of this case, and presents no questions which merit this Court's attention.



The specific issues raised by Stella are obviously frivolous. She most prominently attacks the Sixth Circuit's affirmance of the District Court's denial of her Motion for Joinder. The Court held the Motion was barred, since the claims she alleged against the Non-joined Hospitals arose more than four years prior to her motion. Stella does not dispute this, but argues that the four-year statute of limitations under the antitrust laws is improper because "a statute of limitation cannot properly be applied to the prosecution of a felony", Stella Brief at 5, and because 28 USC §2415(c) provides that "nothing herein shall be deemed to limit the time for bringing an action to establish title to, or right of possession of, property." Stella argues that her medical staff privileges at the defendant hospital was "a property right" and therefore the provisions of 28 USC §2415(c) apply herein.

Both arguments are, of course, simply in error. This is not a criminal, but a civil case,

and the four-year statute of limitations unquestionably applies. Section 2415(c) concerns actions brought by the United States government regarding the government's title to actual property, as opposed to contract rights. It could not apply to a matter such as medical staff privileges possessed by a private individual even if, arguendo, such staff privileges were considered a property right for purposes of due process analysis. In any event, due process analysis would not apply here, since Mercy is a private hospital, and its termination of Stella's privileges do not constitute state action subject to the restraints of the due process clause. See Jackson v Norton Children's Hospitals, Inc, 487 F2d 502, 503 (6th Cir 1973), cert den, 416 US 1000 (1974). Finally, of course, Stella's case is not brought under a due process theory, but under the antitrust laws, and, as the Sixth Circuit noted, her "past claims of sexual discrimination and due process violations are also

bald allegations made without any supportable facts."

Stella's request that this Court review "criminal conduct by the Attorney General of the State of Michigan", Stella Brief at 5, also pertains to matters not properly part of this case, since it concerns issues not in the Amended Complaint and the conduct of persons not parties to this litigation. Stella's suggestion that summary judgment violates the Seventh Amendment protection of the right to jury trial of course contravenes long-settled principles.

The substance of the opinions of both the Sixth Circuit and the District Court, largely ignored by Stella in her brief, does not present significant questions for this Court to review. These decisions simply applied well-established antitrust principles to the facts presented in this case.

The legal principles underlying the rejection of Stella's §1 claim are straightforward; the

decision to terminate a physician's staff privileges, when made for medical reasons, especially when made by a group of physicians who are largely not competitors of the plaintiff, is to be judged under the standards of the Rule of Reason. When no facts are presented to suggest that the termination affected the nature of competition in a relevant market, and no evidence is presented as to the existence of a conspiracy motivated by anticompetitive aims, then judgment for defendants is compelled.

These principles represent the consensus of the various circuit and district courts which have considered these issues. See, e.g., Robinson v Magovern, 521 F Supp 842 (WD Pa 1981), aff'd, 688 F2d 824 (3d Cir 1982); Williams v Kleaveland, 534 F Supp 912 (WD Mich 1981); Pontius v Children's Hospital, 552 F Supp 1352 (WD Pa 1982); Dos Santos v Columbus-Cuneo-Cabrini Medical Center, 684 F2d 1346 (7th Cir 1982); McElhinney v The Medical Protective Co, 549 F Supp 121 (ED Ky 1982).

Stella makes only one attack on these principles, suggesting that the action of the defendants was a group boycott and therefore per se illegal. It is well established under the principles cited again and again by this Court that per se analysis applies only to "practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." Northern Pacific Railway Co v United States, 356 US 1,5 (1958). Where the defendants are not acting horizontally as competitors of the plaintiff, where price is not involved, and where there exist substantial medical and competitive benefits which can arise from self-regulation, the Rule of Reason is the appropriate standard. See, e.g., Robinson, supra, 521 F Supp at 919-920.

The implication of per se analysis, of course, would be that any medical staff privileges decision, even when taken to prevent an obviously medically deficient physician from endangering patients, is a violation of the antitrust laws. No court has or possibly could reach such a decision.

Stella's §2 claim (which she did not discuss in either her Sixth Circuit pleadings or her Jurisdictional Statement) is even more easily disposed of. Stella never has alleged or attempted to demonstrate the possession of or attempt to achieve monopoly power by any defendant. See, e.g., United States v Grinnell Corp, 384 US 563 (1966); United States v Aluminum Co of America, 148 F2d 416 (2d Cir 1945).

Thus, there are no important legal issues presented here. The application of these principles to the facts of this case, an issue on which the District and Circuit Court agreed,

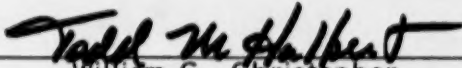
does not merit a grant of certiorari. "We do not grant certiorari to review evidence and discuss specific facts." United States v Johnston, 268 US 220, 227 (1925).

CONCLUSION

For the foregoing reasons, Stella's appeal should be dismissed and, if treated as a petition for writ of certiorari, a writ of certiorari should be denied.

Respectfully submitted,  
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